Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	**CC Dkt. 01-92**
	)	
	)	
Developing a Unified Intercarrier	)	
Compensation Regime	)	

REPLY COMMENTS OF
ALLIED NATIONAL PAGING ASSOCIATION ("ALLIED")
IN RESPONSE TO
FURTHER NOTICE OF PROPOSED RULEMAKING ("NPRM")

Respectfully submitted,

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I. INTRODUCTION

On May 23, 2005, Allied and ninety-plus other parties filed opening Comments herein. In its Comments, Allied emphasized that while a *mandatory* bill and keep rule would contravene the Act, a default rule was appropriate for situations where no interconnection agreement had been sought or obtained.

Allied's Reply Comments will not repeat earlier arguments. Instead they will focus on three issues of particular importance to the paging industry. One is the suggestion by one party that paging carriers are not entitled to dialing parity. A second is rural telco arguments that state-imposed PIC rules somehow prevail over this commission's definition of "local traffic" in 47 C.F.R. Section 51.701(b)(2). The final point relates to the continuing argument over whether universal service contributions ought to be based on a carrier's revenues, or instead on some measure of "connectivity", such as the number of PSTN numbers assigned to the carrier under the North American Numbering Plan.

II. LANDLINE CUSTOMERS HAVE A RIGHT TO DIALING PARITY WHEN CALLING PAGING CUSTOMERS. PAGING CARRIERS ALSO HAVE A RIGHT TO INTERCONNECT ON A NON-DISCRIMINATORY BASIS. CALLS TO PAGING NUMBERS MUST THEREFORE BE TREATED BY THE ORIGINATING ILEC ON A BASIS THAT IS NO LESS FAVORABLE THAN CALLS TO OTHER NUMBERS IN THE SAME RATE CENTER.

The Comments of Nextel Partners, Inc. ("Nextel") suggest (at note 4) that "paging service is a one-way service that would not appear to constitute 'telephone exchange service' and would not be subject to dialing parity requirements". While Nextel does not elaborate, the suggestion might be construed to deny the right of paging carriers to obtain "local" numbers in rate centers throughout their service areas, and their right to interconnect "directly or indirectly" in order to take delivery of such calls, and, ultimately, their right to compensation for terminating such calls.

There is an obvious link between dialing parity and the other issues raised by this Further NPRM. If, by some stretch, calls to paging numbers are not subject to dialing parity, ICOs would be doubly motivated to require 1+ dialing for calls to locally rated paging numbers. The 1+ mechanism would in turn trigger routing to an IXC, and the imposition of originating access charges for these intra-MTA calls. The calling landline subscriber would be forced to pay toll or long distance rates to reach the paging customer, while the latter would be under pressure to abandon paging service in favor of alternatives, such as broadband messaging services offered by the originating ILEC itself.

Effectively, then, a denial of dialing parity for land-to-pager traffic would lead to a denial of the benefits of termination compensation for paging carriers, as well as of their rights under Section 251(a) to interconnect directly or indirectly and on a non-discriminatory basis with other telecommunications providers.

Happily, the Commission need not, and indeed may not, reach any such result. Current rules are explicitly focused on the calling party, and not on the identity of the called party. Section 51.207 states:

> A LEC shall permit telephone exchange service customers with a local calling area to dial the same number of digits to make a local telephone call notwithstanding the identity of the customer's or the called party's telecommunications service provider.

Therefore, regardless of whether an ICO may also have an obligation under Section 251(b)(3) to allow other exchange carriers to dial ICO customers on a non-discriminatory basis, the ICO most certainly has a duty to provide dialing parity to its own customers when they dial local paging numbers. In too many cases they are not doing so.[1]

III. THIS COMMISSION HAS CLEAR AUTHORITY TO DEFINE "TELECOMMUNICATIONS" FOR PURPOSES OF THE RECIPROCAL COMPENSATION PROVISIONS OF THE ACT. IT HAS DONE SO, AND ITS INTRA-MTA RULE MUST PREVAIL OVER CONTRARY STATE "PIC" RULES.

As noted by paragraph 142 of the Further NPRM, smaller telcos are incented wherever possible to convert calls from the termination compensation regime of Section 2519(b)(5) to the pre-1996 access regime under which they were able to claim originating and terminating charges which contained substantial subsidy elements. One means of doing so – limitations on the dialing parity requirement – has been discussed. Another – appeals to state PIC rules – will be addressed.[2]

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[1] CLECs and broadband CMRS commenting parties have documented examples of abuse. Paging carriers tell the same tales. In California and Oregon, Cook Telecomm provides paging services in many areas also served by small ICOs. Cook's customers include many fire, forestry and ambulance services that count on the coverage and reliability of paging, especially for group messaging in emergency situations. These customers have a clear need for local numbers. Yet the ICOs generally refuse to deliver land-to-pager calls on a local basis to the SBC (or Qwest) tandems where Cook has its Type 2 connections and to which the ICOs are also linked. The *only way* for Cook to obtain local treatment, i.e. dialing parity, is to install long-haul dedicated Type 1 links between its switch and each end office to which it has rated its numbers. The cost of these links is borne exclusively by Cook, notwithstanding the provisions of 47 C.F.R. Sections 51.703 and 51.709.

[2] See Comments by John Staurulakis, Inc. at pages 18 ff. and The Rural Alliance at pages 126 ff.

Paragraph 1036 of the first Report and Order, 11 FCC Rcd 15499 (1996) states clearly that intraMTA CMRS calls are considered "local telecommunications" and are subject to reciprocal compensation under Section 251(b)(5) "rather than interstate and intrastate access charges". A comparison of paragraphs 1035 (which explicitly gives states authority over the definition of local traffic in a land-to-land context) and paragraph 1036 leaves no room for doubt: the latter is based on the FCC's "exclusive authority …to define the local service area for calls to and from a CMRS network." There is simply no room for any state tariff or PIC rule that would effectively reverse this result.[3]

IV. UNDER SECTION 254(d) OF THE ACT, CONTRIBUTIONS TO UNIVERSAL SERVICE FUNDING MECHANISMS MUST BE "EQUITABLE AND NON-DISCRIMINATORY". ANY RULE BASING CONTRIBUTIONS ON ASSIGNED NUMBERS WOULD BE BOTH INEQUITABLE AND DISCRIMINATORY AGAINST PAGING CARRIERS.

On March 22, 2002 and on February 28, 2003, Allied filed comments in the various universal service dockets (Nos. 96-45, 98-171 etc). These comments addressed the issue of whether universal service contributions should be "connection based" or "revenue based".

Allied's arguments need not be repeated in their entirety except to say that they resonate even more today than they did at the time. The estimated number of paging units now in service ranges between ten and fifteen million, down from forty million-plus some years ago. Average revenues per unit are slightly more than $8 per month. This is to be compared to estimated revenues per landline and cellular/PCS unit of $40 or more. The discrepancy is easily explained: thanks to their broadband status other carriers are able to

[3] This Commission's jurisdiction over all matters relating to CMRS interconnection was made clear by the Omnibus Budget Reconciliation Act and 47 U.S.C. Section 332(c)(1)B. Lest there be any doubt, paragraphs 1035-36 of the First Report and Order state explicitly that intraMTA CMRS calls are to be treated as "local" notwithstanding the state definition of "exchange traffic". If, as argued by some, calls to numbers in different rate centers in the same MTA were to be routed through an IXC, the net result would be to convert the intraMTA rule of paragraph 1036 to the intra-exchange rule of paragraph 1035.

provide not only short messaging service (thus competing directly with paging) but also voice and internet access services, all to the same unit using the same number.

Any "per number" measure for universal service contributions would discriminate against low cost/low revenue services which require a relatively large stock of telephone numbers. This is especially true of paging services which are not capable of number pooling and which have historically relied on Type 2 interconnection, which though more efficient, has required the acquisition of full number blocks in each landline exchange within the paging service area.

The growth of web-based communications also shows how vulnerable a number-based assessment would be to arbitrage. Since access may be achieved through the use of Internet addresses rather than telephone numbers, some providers may be able to avoid using the latter in the same manner that older services have used PBX technology to provide access through a single number to and from multiple end user stations.

Put simply, the number of numbers assigned by the NANP to a carrier is no indicator of the carrier's total use of the PSTN or the revenues that it enjoys from having access to the PSTN.[4] Actual revenues from telecommunications services are the best such indicator, and have been upheld as equitable and non-discriminatory under Section 254(d).

V. CONCLUSION

Spectrum limitations have prevented paging from effectively competing with broadband carriers in the voice and Internet access markets. Paging units in service are much reduced, as are per unit revenues.

[4] The same thing would be true if the commission were to look to the number of dedicated trunk groups linking a switch to the outside world. For reasons alluded to in Allied's Comments and those of others, the ILECs have pressured CMRS providers to install unneeded dedicated transport links to multiple locations where a single link to one POI would be more efficient.

Nonetheless, paging continues effectively to compete in the short messaging market. Up to fourteen million consumers depend on the superior reliability of paging for many purposes. For these customers, paging is a viable choice because of lower costs joined with longer battery life, greater building penetration, and better coverage in difficult terrain.

Paging asks for no special favors. It only asks for equitable and non-discriminatory treatment under the Act.

Respectfully submitted,

/s/

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